THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11434 of 2007

DATE: 11-06-2007

Between :

Kolusu Brahmayya

… Petitioner

And

State of A.P.,
Rep., by its Secretary,
Revenue (Endowments-I) Department,
Secretariat Buildings, Hyderabad and 3 others.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 11434 of 2007

ORDER:

The petitioner herein claims to be the cultivating tenant of the wetland to an extent of Ac.4.66 cents situated in R.S.No.168 of Jujjivaram village, Pamarru Mandal, Krishna District belonging to the fourth respondent-temple. It is stated that pursuant to the notice issued by the Executive Officer of the fourth respondent-temple, dated 17-05-2005, calling upon the petitioner to handover the possession of the land in question within 30 days, the petitioner made an application before the Assistant Commissioner of Endowments seeking a declaration that he is a landless poor person and therefore, entitled to the benefit under Section 82(2) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'Act 30 of 1987'). The Assistant Commissioner, after conducting due enquiry, passed an order dated 28-07-2006 holding that the petitioner is not a landless poor person as claimed by him. Aggrieved by the same, the petitioner preferred an appeal before the Regional Joint Commissioner-second respondent herein. The said appeal was dismissed by order dated 20-03-2007. In pursuance thereof, the fourth respondent issued the impugned auction notice dated
05-05-2007 proposing to conduct auction on 30-05-2007 for grant of leasehold rights of the land in question. Hence, this writ petition seeking a declaration that the action of the respondents 2 and 3 in holding that the petitioner is not a landless poor person and the consequential action of the fourth respondent in issuing the auction notice dated 05-05-2007 is arbitrary, illegal and contrary to the

provisions of Act 30 of 1987 and the Rules framed under G.O.Ms.No.379 dated 11-03-2003.

I have heard the learned counsel for the petitioner and perused the material on record.

At the outset, it is to be noted that though the petitioner has been in possession and enjoyment of Ac.4.66 cents of dry land belonging to the fourth respondent-temple, there is absolutely no material to show that there was any valid lease in his favour prior to commencement of Act 30 of 1987.

As held by this Court in ***V.V. Krsihna Reddy v. Ramalingeswara Swamy Devasthanam***[1]***,*** a plain reading of Section 82 of Act 30 of 1987 shows that the expression "cultivating tenant" refers to a person cultivating the land in question lawfully after obtaining the lease in accordance with law.

In the case on hand a finding of fact has been recorded by the second respondent that the petitioner was never granted a valid lease and much less there was any approval by the competent authority as required under law. May be that the rents deposited by the petitioner were received by the Executive Authority of the temple, however that by itself does not confer any rights of tenancy on the petitioner.

It is also relevant to note that under sub-section (2) of Section 82, it is also necessary for the cultivating tenant who is a landless poor person to establish that he has been holding the land in question not less than six years continuously by the date of commencement of Act 30 of 1987. The respondents 1 and 2, on appreciation of the material produced by the petitioner, recorded a concurrent finding of fact that the petitioner failed to establish that he has acquired the land in question prior to six years of commencement of Act 30 of 1987 under a valid lease.

In the circumstances, the mere fact that he is in possession of less than the prescribed limit of Ac.5.00 of dry land is of no consequence and the respondents cannot be said to have committed any error in proposing to auction the leasehold rights of the land in

question.

The writ petition is devoid of merit and is hereby dismissed. No costs.

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G. ROHINI, J.

Date: 11-06-2007
KLP

[1] 2007(1) ALD 262